

CAMPUS SEXUAL ASSAULT CONFERENCE

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Maricopa County Board of Supervisors Auditorium

Phoenix, Arizona



Governor's Office
of Youth, Faith and
Family



CRIMINAL INVESTIGATION & PROSECUTION OF CAMPUS SEXUAL ASSAULT

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Distributed by:

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Criminal Investigation and Prosecution of Campus Sexual Assault

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Overview

- First Responders
- Investigation
- Title IX Impact
- Prosecution

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First Responders

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First Responders

- Limited interview
 - What happened?
 - Where did it happen?
 - When did it happen?
 - Was a weapon used? If so, do you know where the weapon is now?

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First Responders

- If unknown suspect
 - Tell me about the person's clothes
 - Describe the person's appearance
 - (versus: Did person have light or dark hair?)
- Note demeanor

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Attitude Matters

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Investigation

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Interviewing Victim

- Cognitive Interview
 - Advanced Forensic Interviewing Training
- Before medical exam

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Who is first person you told?

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Attitude Matters

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One-Party Consent Calls

- Think outside the box!
 - Medium
 - Participants

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Interviewing Suspects

- Rapists do not see themselves as rapists.
- Do not use the "R" word.

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Focus on Behavior

- A: What happened to you? Nothing happened to you. We were tipsy, we were drunk and talking and having a good time. Shit got rough a little bit. So what? Big deal. You're a big girl. You can handle it.
- Q: But you hit me, like you slapped me in the face.
- A: Well, you know what? Sometimes shit gets rough like that. You know what I mean? It's part of having a good time, you know?

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Focus on Behavior

- Q: But that was – that wasn't just rough, because that – that had never happened before, you know?
- A: Well, 'cause maybe you never kicked it with a guy like me before.

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Must Prove

- Defendant intentionally and knowingly engaged in sexual contact, and that the defendant knew that such contact was without the consent of the victim.
- Defendant's alcohol consumption?

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Working with the Crime Lab

- Most probative sample?

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Drug-Facilitated Sexual Assault

- Test urine
- Do not overlook alcohol investigation
 - Bar tabs of victim and witnesses and suspect
 - Videos

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Title IX

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Title IX

- 2011 – 2015: Average payout to accused who file suit:
 - \$187,000
- Since March 2013: 117 court reversals

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Title IX Issues

- Interviews
- Accommodations

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Garrity?

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"The situation is a very common one that comes up with students at both private and public schools," said Naomi Shatz, a lawyer specializing in students' rights and Title IX at Zalkind Duncan & Bernstein in Boston. "Students are often required to make a decision about whether to participate in a Title IX investigation while a criminal investigation or case is or may be pending, and at that point they have to decide whether to protect their Fifth Amendment rights and not say anything to the school -- thereby increasing the likelihood they are found responsible in the school proceeding -- or waive those rights and participate in the school process knowing that the statements they make there may be used in a subsequent criminal proceeding."

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DeVos's New Rules

- **Narrow definition of sexual misconduct**
 - Related to speech
- **Mandate cross-examination**
 - Accuser and accused do not need to be in the same room, but reps may submit questions for the other party to answer.
 - Still have rape shield exception

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DeVos's New Rules

- **Let colleges opt for clear and convincing standard**
 - Must be same as non-Title IX cases
- **Grant both parties "equal opportunity to inspect and review evidence."**

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Prosecution

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Counterintuitive Behavior

- Don't heed warning signs
 - Cognitive Dissonance
- Have to be "talked into" being a victim
- Question/blame self
- Re-contact offender
- Recant

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Use a blind expert

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ERROR

- Def Atty: “[Y]ou are unaware of the actual number of people that you dealt with who are actual victims as opposed to people who are false accusers?”
- “Correct. I have never counted them.”
- Juror: “[H]ow many victims have you worked with who have eventually been discovered as false accusers?” (Defense did not object.)
- “I’m comfortable saying a very low percentage, 3 to maybe 5%.”

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ERROR - Prosecutor’s Closing

- “False allegations of rape are rare,” and “[the expert] told you that it is about 3 – 5%, and ... right in line with [the detective’s] testimony ... [that it is] almost 2%” inappropriately drew the conclusion for the jurors that the [victim] was telling the truth based on the reliability of past victims.

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Jury Selection

- #Metoo
- Victim behavioral characteristics
- Morality issues

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- Do you generally agree with the statement, "there's truth in numbers".
 - Why/why not?
- Do you believe that in cases of sexual assault, most people tell right away?
 - Could you understand that there may be reasons why a person's disclosure may be delayed for some time?
 - Would you be willing to listen and defer to an expert witness in the characteristics of sexual sexual assault about this?

Please indicate whether you agree or disagree with the following statement:
 "If no medical evidence exists in a crime, the crime must not have occurred."

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree
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- Do you believe that a person deserves to be victimized as a result of making bad choices?
- Have you or anyone close to you struggled with any type of addiction? If yes, please explain.
- Do you watch the television show "Intervention" and/or "Addicted"? If yes, please explain your general feelings about the show and subject matter.

Cross-Examination

- Focus on behaviors

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Closing Argument

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Law Does NOT Require

- Victim to say “no”
- Victim to fight/resist
- Victim to choose alternative to sex, such as injury or death

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Acquiescence ≠ Consent

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Not consent

- When victim cries
- When victim says it hurts
- When victim wants it over
- When victim covers her face
- When victim is unconscious

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Bibliography

- Fisher & Geiselman, The Cognitive Interview method of conducting police interviews: Eliciting extensive information and promoting Therapeutic Jurisprudence, International Journal of Law and Psychiatry (2010).
- Fisher & Geiselman, Interviewing Witnesses and Victims, To appear in: Michel St. Yves (Ed.), Investigative Interviewing: Handbook of Best Practices. Thomson Reuters Publishers, Toronto, (2014)
- State v. Moore, 2017 WL 56267 (App. 2017)

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